

VIOLENT CRIME REDUCTION ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Miscellaneous

Section 52: Football-related disorder

273. *Subsection (1)* repeals section 5(2) of the Football (Disorder) Act 2000. That provision places a time limit on the provisions relating to:
- football banning orders made on complaint (section 14B of the Football Spectators Act 1989), and
 - summary police powers given to constables during control periods relating to regulated football matches (section 21 of the same Act). These include the power to prevent any individual against whom there is evidence of previous involvement in football-related violence or disorder and who is felt to pose a continuing public order risk from travelling to a regulated match overseas.
274. *Subsection (2)* introduces Schedule 3, which contains amendments to the provisions of the Football Spectators Act 1989 relating to the administration of football banning orders.
275. *Part 1* of Schedule 3 amends the provisions of the Football Spectators Act 1989 (the "1989 Act") relating to football banning orders.
276. *Paragraph 2(1)* inserts new subsections (4BA) and (4BB) into section 14A of the 1989 Act. These enable the court to remand the offender when proceedings for an order under section 14A are adjourned, and to impose bail conditions preventing the individual from leaving England and Wales before his appearance before the court, and requiring him to surrender his passport. *Paragraph 2(3)* inserts new subsections (5) and (6) into section 14B of the 1989 Act which provide for the same in relation to an adjourned section 14B hearing.
277. *Paragraph 3(1)* inserts three new subsections into section 14A of the 1989 Act which allow the prosecution to appeal against a failure by the court to impose a banning order on an individual convicted of a relevant offence. *Paragraph 3(2)* inserts new subsection (1A) into section 14D, providing a right of appeal for the applicant against the dismissal by a magistrates' court of an application for a banning order under section 14B. The appeal lies to the Crown Court.
278. *Paragraph (4)* amends section 14B to extend the scope for chief officers of police to apply for a section 14B football banning order by removing the limitation as to area of residency of the subject. It also provides a power for the Director of Public Prosecutions to apply for a section 14B order.
279. *Paragraph (5)* amends section 14E of the 1989 Act and requires the subject of a football banning order to notify the enforcing authority of specified changes to his personal circumstances.

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280. *Paragraph (6)* amends section 14F to extend the minimum and maximum periods of a football banning order made on complaint (section 14B) from between 2 and 3 years to between 3 and 5 years.
281. *Paragraph (7)* amends section 19 of the 1989 Act and requires the subject of a banning order to notify the enforcing authority and police of any temporary residence during a control period.
282. *Paragraph (8)* amends section 25 to provide that a notice or other document served on a subject of a banning order is deemed to be received by him unless proved otherwise.
283. *Paragraph (9)* amends the Schedule of offences that can be designated as football related for football banning order purposes to include the offence under section 4A of the Public Order Act 1986 (using threatening behaviour etc with intent to cause harassment, alarm or distress).
284. **Part 2** of Schedule 3 makes various amendments which are consequential on those made to the 1989 Act by Part 1.
285. *Subsection (3)* repeals sections 2 to 7 of the Football Spectators Act 1989 which though never brought into force, made provision for the introduction of a national membership scheme restricting attendance at regulated football matches.

Section 53: Sale and disposal of tickets by unauthorised persons

286. **Section 53** amends section 166 of the Criminal Justice and Public Order Act 1994 to update provisions on the sale and disposal of football match tickets by unauthorised persons to cover ticket touting on the internet and other practices associated with the unauthorised sale and distribution of tickets.
287. *Subsection (6)* inserts new section 166A into the Criminal Justice and Public Order Act 1994, which is designed to ensure that the offence in section 166 of that Act is compatible with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 (the electronic commerce directive). New section 166A(1) ensures that the provisions in section 166 do not apply to internet service providers based outside the UK. Section 166A(2) makes it an offence for an internet service provider established in the UK to sell or otherwise dispose of tickets for designated football matches regardless of where the sale etc takes place. Section 166A(3) to (5) provides a defence (derived from the electronic commerce directive) in certain circumstances for internet service providers who essentially only transmit or store information.

Section 54: Forfeiture and detention of vehicles etc.

288. **Section 54** introduces Schedule 4 to the Act, which amends the Sexual Offences Act 2003 (“the 2003 Act”) by inserting new sections 60A, 60B and 60C. Section 60A enables the court, when a person is convicted on indictment of an offence under sections 57 to 59 of the 2003 Act (trafficking into, within and out of the UK for sexual exploitation), to order the forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of which the person is convicted. *Subsection (2)* of section 60A lists the circumstances that would allow the forfeiture of a vehicle; *subsections (3) to (7)* do likewise for a ship or aircraft. *Subsection (8)* allows a person who claims to have an interest in a vehicle, ship or aircraft, and who makes an application to the court, to make representations on the question of forfeiture before the court may make an order for its forfeiture.
289. Section 60B enables a constable or immigration officer not below the rank of chief immigration officer to detain a vehicle, ship or aircraft of a person arrested for an offence under sections 57 to 59 if it is one which the constable or officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 60A. *Subsection (1)* explains that detention is permitted until a decision is taken

whether or not to charge the arrested person, until the arrested person is acquitted, the charge against him dismissed or the proceedings discontinued, or, where the person is subsequently convicted, until the court makes a decision on forfeiture.

290. *Subsection (3)* lists the circumstances in which a person other than the arrested person may apply to the court for the release of that vehicle, ship or aircraft. *Subsection (4)* provides that on such an application the court may release the vehicle, ship or aircraft subject to satisfactory security or surety and on condition that it is made available to the court if the arrested person is convicted and if an order under section 60A is made.
291. Section 60C provides definitions for some of the terms used in sections 60A and 60B.
292. The effect of paragraph 3 of Schedule 4, read with section 66(7), is that sections 60A to 60C of the 2003 Act extend to Northern Ireland. Sections 57 to 59 of that Act already extend to Northern Ireland.

Section 55: Continuity of sexual offences law

293. **Section 55** provides that where a person is charged in respect of conduct that is an offence under the Sexual Offences Act 2003 and was an offence under one of the repealed offences listed in *subsection (2)*, and the only thing preventing the person being found guilty is that it cannot be proven beyond reasonable doubt whether the conduct took place before or after the commencement of the Sexual Offences Act 2003, then it shall be conclusively presumed for the purposes of determining the guilt of the defendant that the conduct took place at a time when the offence in respect of that conduct carried the lower penalty in terms of a custodial sentence which could be imposed on conviction of the defendant. If the penalties are the same, then it shall be conclusively presumed that the conduct took place after the commencement of the Sexual Offences Act 2003.
294. *Subsection (5)* extends the provision to inciting, conspiring and attempting to commit the specified offences.
295. *Subsection (6)* provides that section 55 applies to any proceedings, whenever commenced, other than where, before the commencement of section 55, the defendant has been convicted or acquitted of the offence under the Sexual Offences Act 2003 or the repealed offence.

Section 56: Cross-border provisions relating to sexual offences

296. The effect of *subsection (1)* of section 56 is that offenders convicted in Scotland of new offences under Scottish law introduced by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 – new offences of meeting a child following certain preliminary contact (“grooming”); paying for the sexual services of a child; causing or inciting child prostitution or pornography, and arranging or facilitating child prostitution or pornography – and who subsequently become subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (the sex offenders register) in Scotland will also become subject to the notification requirements any time they are in any other part of the United Kingdom.
297. The Scottish Act also made it possible for courts in Scotland to make sexual offences prevention orders (SOPOs) when dealing with a qualifying offender who poses a risk of serious sexual harm (previously in Scotland such orders could only be made on application from the police), as well as introducing risk of sexual harm orders (RoSHOs). The Sexual Offences Act 2003 already introduced court-issued SOPOs and RoSHOs into the rest of the United Kingdom. *Subsection (2)* of section 56 ensures that it is an offence in England and Wales and Northern Ireland to contravene a SOPO made under the Scottish Act. It ensures that persons subject to such SOPOs are also subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 when in any other part of the United Kingdom. *Subsection (3)* of section 56 ensures that

contravention of a RoSHO made under the Scottish Act is an offence in England and Wales and Northern Ireland.

Section 57: Amendment of s.82 of the Sexual Offences Act 2003

298. **Section 57** covers persons aged 18 or over who are convicted of a serious sexual offence and, in the opinion of the court, remain a significant risk to members of the public of serious harm from future offences. Those who are punished by a sentence of imprisonment for public protection, as provided for by section 225 of the Criminal Justice Act 2003, will be required to notify the police of certain personal details for an indefinite period. The notification requirement will therefore apply for the rest of the offender's life.

Section 58: Power of entry and search of relevant offender's home address

299. **Section 58** amends the Sexual Offences Act 2003 by inserting new section 96B. Section 96B will enable a magistrate, on application from a senior police officer of the relevant force, to issue a warrant to allow a constable to enter and search the home of a relevant offender for the purposes of assessing the risks that the offender may pose to the community. A "relevant offender" is a person who for the time being is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (section 80(2) of that Act). A "senior police officer of the relevant force" is a constable of the rank of superintendent or above of the police force in whose area the premises are located (*subsection 10*). The warrant must be executed by a constable of the police force in whose area the premises are located.
300. *Subsection (2)* sets out the requirements that must be met before the warrant will be issued. These requirements set out that the address must be one that the offender has notified to the police as his home address or one in respect of which there is a reasonable belief that the offender can be regularly found there or resides there. The offender must not be in custody, detained in a hospital or outside the United Kingdom at the time. A constable must have tried on at least two previous occasions to gain entry to the premises for the purpose of conducting a risk assessment and been unable to gain entry for that purpose.
301. *Subsection (5)* requires that the warrant specifies each address to which it relates. *Subsection (6)* allows a constable to use reasonable force if it is necessary to do so to enter and search the premises. *Subsection (7)* states that the warrant can authorise as many visits as the magistrate considers to be necessary for the purposes of assessing the risks posed by the offender which, by virtue of *subsection (8)*, can be unlimited or limited to a maximum.

Section 59: Limitation period for anti-social behaviour orders

302. *Subsection (1)* amends section 1 of the Crime and Disorder Act 1998 to make provision in respect of the interplay between that provision and the Magistrates' Courts Act 1980 in respect of information laid or complaints made in magistrates' courts for Anti-social Behaviour Orders. It provides that nothing in section 1 of the Crime and Disorder Act 1998 affects the operation of section 127 of the Magistrates' Courts Act 1980. Consequently some conduct within the six-month period preceding the application is necessary to obtain an Anti-social Behaviour Order. *Subsection (2)* amends the Anti-Social Behaviour (Northern Ireland) Order 2004 to ensure this also applies to ASBOs being sought in Northern Ireland.

Section 60: Parenting orders

303. This section amends the Crime and Disorder Act 1998 ("the 1998 Act") to take account of the Sexual Offences Act 2003. Currently section 8 of the 1998 Act provides for a court to make a parenting order in the same proceedings in which it makes a sex offender order in respect of a child or young person. The Sexual Offences Act 2003 repealed

the sex offender order provisions and replaced them with sexual offences prevention orders (“SOPOs”). *Subsection (2)(a)* amends section 8 of the 1998 Act by replacing the reference to a sex offender order with a reference to a SOPO thus allowing courts to make a parenting order in the same proceedings in which it makes a SOPO against a child or young person provided it would be desirable in preventing a repetition of the kind of behaviour that led to the SOPO being made. *Subsection (2)(b)* defines a SOPO by reference to section 104 of the Sexual Offences Act 2003. *Subsection (3)* removes the redundant definition of a sex offender order from the 1998 Act. *Subsection (4)* provides that parenting orders will be available in proceedings in which a SOPO is made before as well as after this Act is passed.

Section 61: Committal of young persons of unruly character

304. This section amends section 23(1)(a) of the Children and Young Persons Act 1969 so that the references in it to committing for trial are expanded to include sending for trial. Although at present most cases involving juveniles that go to the Crown Court for trial are committed there, some are sent under section 51 of the Crime and Disorder Act 1998; and when section 41 of and Schedule 3 to the Criminal Justice Act 2003 are brought into effect, sending will become the only route.

Section 62: Offering or agreeing to re-programme mobile telephone

305. This section amends the Mobile Telephones (Re-programming) Act 2002 to add to the circumstances in which an offence can be committed under section 1 of that Act. Under that section it is an offence to change the unique International Mobile Equipment Identity (IMEI) number which identifies a mobile telephone handset. Under this section a person will commit an offence if he offers or agrees to change or interfere with an IMEI number or other unique device identifier, or if he offers or agrees to arrange for another person to do so. Commission of the offence is not dependent on re-programming actually taking place. The section also has the effect that it will be possible to bring criminal proceedings for the offence even if the identity of the person (if any) who actually carries out the re-programming is unknown.
306. The offence is triable either way. The offence is punishable on conviction on indictment by up to 5 years' imprisonment or a fine or both. The offence is punishable on summary conviction by up to 6 months' imprisonment or a fine not exceeding the statutory maximum (currently £5,000) or both.
307. It will not, however, be an offence for the manufacturer of a mobile telephone, or his authorised agent, to offer or agree to re-programme it, or to arrange for someone else to do so.

Section 63: Removal of sports grounds etc from private security industry regulation

308. **Section 63** amends section 4 of the Private Security Industry Act 2001 (exemptions from licensing requirements) to exempt certain persons from the licensing requirement under that Act.
309. The new subsection (6) exempts from the licensing requirement of the 2001 Act all in-house staff of a sports ground who carry out licensable conduct within the meaning of section 3 of that Act on any part of their home ground, if it is a premises covered by a safety certificate under either the Safety of Sports Grounds Act 1975 or the Fire Safety and Safety of Places of Sport Act 1987 and if the conduct is carried out in connection with the use of those premises for purposes for which that safety certificate has effect. The new subsection (6A) also exempts from the licensing requirement under the 2001 Act in-house staff who accompany their club to other sports grounds where both the home ground and the sports ground being visited are covered by a safety certificate under the safety at sports grounds legislation and where the conduct is carried out in connection with the use of the host premises for purposes for which its safety certificate has effect.

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310. The new subsection (7) defines the in-house staff covered by the section.
311. The new subsections (8) and (9) set out what is meant by the use of a ground or stand for purposes for which its safety certificate has effect. The exemption will cover activities specified in a general safety certificate or specified in respect of a specific occasion in a special safety certificate. The new subsection 4(10) makes interpretative provision.
312. [Section 63](#) covers all in-house staff working on the specified premises and exempts them from the licensing requirement in respect of all types of licensable conduct within the meaning of section 3 of the 2001 Act. This includes those who supervise contracted staff and those who are themselves provided by their employer to a third party. It does **not** cover contracted staff who undertake licensable conduct in premises covered by the safety at sports grounds legislation or in-house staff who undertake licensable activity in licensed premises that are not covered by the safety at sports grounds legislation. These people will still need to be licensed under the 2001 Act.